

CCRB INVESTIGATIVE RECOMMENDATION

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|---|--|---------------------------|--|---|---------------------------------|
| Investigator: Daniel Cooper | Team: Squad #7 | CCRB Case #: 201800839 | <input type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 01/23/2018 10:15 PM | Location of Incident: In front of 130 Church Street | Precinct: 01 | 18 Mo. SOL 7/23/2019 | EO SOL 7/23/2019 | |
| Date/Time CV Reported Tue, 01/23/2018 11:50 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 01/31/2018 11:16 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|----------------------|--------|--------|---------|
| 1. POM Matthew Horan | 15001 | 956741 | 001 PCT |
| 2. POM Frank Gut | 05662 | 949070 | 001 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|------------------------|-----------|--------|----------|
| 1. SGT Daniel Moessner | 5417 | 941233 | 001 PCT |
| 2. POM Justin Naimoli | 26063 | 941237 | 001 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------------|--|-----------------------------|
| A.POM Matthew Horan | Discourtesy: Police Officer Matthew Horan spoke discourteously to § 87(2)(b) | |
| B.POM Frank Gut | Off. Language: Police Officer Frank Gut made remarks to § 87(2)(b) based upon his perceived mental disability. | |
| C.POM Matthew Horan | Abuse: Police Officer Matthew Horan searched § 87(2)(b) | |
| D.POM Matthew Horan | Discourtesy: Police Officer Matthew Horan acted discourteously toward § 87(2)(b) | |

Case Summary

On January 23, 2018, § 87(2)(b) filed this complaint via 911 with IAB, generating IAB Log number 18-0319. The case was received at the CCRB on January 31, 2018.

On January 23, 2018, at approximately 10:15 p.m., at the intersection of Church Street and Murray Street, in Manhattan, while driving, § 87(2)(b) was stopped by PO Mathew Horan and PO Frank Gut, from the 1st Precinct. PO Horan approached § 87(2)(b)'s vehicle and allegedly stated, "Are you fucking crazy?" (**Allegation A: Discourtesy:** § 87(2)(g)) PO Gut then allegedly said something similar to, "Are you retarded?" (**Allegation B: Offensive Language:** § 87(2)(g)) While § 87(2)(b) had his wallet in his hand, PO Horan allegedly grabbed his wallet, removed § 87(2)(b)'s driver's license, and threw § 87(2)(b)'s wallet (**Allegation C: Abuse of Authority and Allegation D: Discourtesy:** § 87(2)(g))

§ 87(2)(b) was issued a summons for failure to signal when changing lanes. There was no video evidence for this case. § 87(2)(g)

Allegation A: Discourtesy: Police Officer Matthew Horan spoke discourteously to § 87(2)(b)

Allegation B: Offensive Language: Police Officer Frank Gut made remarks to § 87(2)(b) based upon his perceived mental disability.

Allegation C: Abuse of Authority: Police Officer Matthew Horan searched § 87(2)(b)

Allegation D: Discourtesy: Police Officer Matthew Horan acted discourteously toward

§ 87(2)(b)

§ 87(2)(g)

It is undisputed that § 87(2)(b) was pulled over by PO Horan and PO Gut and issued a summons for failure to signal while changing lanes.

§ 87(2)(b) stated that after he was pulled over, PO Horan and PO Gut approached the driver's side of his vehicle. PO Horan stated, "What's the matter with you? Are you fucking crazy?" As § 87(2)(b) attempted to explain why he did not signal, PO Horan spoke over him. § 87(2)(b) could not recall the exact phrase, but believed PO Gut asked him something similar to, "Are you retarded?" Initially, when filing his complaint, § 87(2)(b) had difficulty articulating the phrase and stated PO Gut said something similar to "terrorist," but during his interview, he clarified that is not a statement either officer made.

§ 87(2)(b) stated that before he had a chance to hand his wallet to PO Horan, PO Horan took the wallet from his hands, removed his identification, and then threw the wallet at him. During his phone statement, § 87(2)(b) stated that the wallet hit him in his face, but during his in-person statement, § 87(2)(b) stated the wallet hit him in his chest, not his face (Board Review 1 and 2).

PO Horan stated that he approached § 87(2)(b)'s driver's side as PO Gut stood behind him. PO Horan told § 87(2)(b) that he almost hit the officers' vehicle. PO Horan denied that he or PO Gut said, "Are you fucking crazy" or that they used any profanity. PO Horan also denied that he or PO Gut asked § 87(2)(b) "Are you retarded?" or made any comments regarding § 87(2)(b)'s mental capacity or perceived disability.

During his conversation with § 87(2)(b) PO Horan asked § 87(2)(b) to provide his license, registration and insurance. In response, § 87(2)(b) stated that he knew his rights and told PO Horan that he would not cooperate with him. PO Horan asked § 87(2)(b) again to provide the documentation, and he still did not provide it. PO Horan told § 87(2)(b) that he could arrest him since he continually refused to provide his documentation and asked him to step out of the vehicle. Again, § 87(2)(b) stated that he knew his rights, told the officers that they were racists, and did not exit his vehicle.

Both PO Horan and PO Gut asked § 87(2)(b) to step out of the vehicle two more times and he still did not exit. It was not until PO Gut told PO Horan to cut § 87(2)(b)'s seatbelt that § 87(2)(b) retrieved his wallet, removed his identification himself and handed it to PO Horan. PO Horan denied that he or PO Gut was in possession of § 87(2)(b)'s wallet or searched the wallet and denied that he or PO Gut threw § 87(2)(b)'s wallet at him (Board Review 3 and 4).

PO Gut was generally consistent with PO Horan. He stated he approached § 87(2)(b)'s driver's side first as PO Horan stood behind him. PO Gut denied that he or PO Horan asked § 87(2)(b) "Are you fucking crazy?" or "Are you retarded?" and denied that he made any comments towards § 87(2)(b) about his mental capacity or perceived disability. PO Gut was consistent that he and PO Horan asked § 87(2)(b) to provide his documentation more than twice and he did not provide the documentation to them.

After § 87(2)(b) refused to provide his documents, PO Gut told § 87(2)(b) that he was going to arrest him and he began to unfasten § 87(2)(b)'s seatbelt. At that point, § 87(2)(b) retrieved his wallet and handed PO Gut his driver's license. PO Gut denied that he or PO Horan were ever in possession of § 87(2)(b)'s wallet or searched the wallet and denied that he or PO Horan threw § 87(2)(b)'s wallet at him (Board Review 5 and 6).

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Civilian and Officer CCRB Histories

- This is the first complaint in which § 87(2)(b) has been a party (Board Review 17).
- PO Horan has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Gut has been a member of service for seven years and he has been the subject of one CCRB complaint and two allegations, none of which were substantiated § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of May 16, 2017, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to this complaint (Board Review 8).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature _____ Print Title & Name _____ Date _____

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____